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November 30, 1989

The Honorable Sandra Kennedy  
State Representative  
State Capitol - House Wing  
Phoenix, Arizona 85007

Re: I89-101 (R89-143)

Dear Representative Kennedy:

The Legislature, in the First Special Session, adopted S.B. 1008 which amended A.R.S. § 1-301 to designate the third Monday in January as "Martin Luther King, Jr. Day." See Laws 1989 (1st Spec. Sess.) Ch. 4. The bill also provided for changing the observance of Columbus Day from the second Monday to the second Sunday of October. *Id.* You ask whether the Columbus Day portion of the enactment is unconstitutional. We conclude that the portion of S.B. 1008 pertaining to Columbus Day would be, in our opinion, declared by a court to be void because the title of S.B. 1008 includes no reference to the Columbus Day Holiday as required by Arizona's Constitution. This, however, does not affect the remainder of S.B. 1008 wherein the Legislature established the King Holiday.

Arizona's Constitution provides:

Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

Ariz. Const. art. IV, pt. 2, § 13 (emphasis added). The title of S.B. 1008 provides:

AN ACT

RELATING TO GENERAL PROVISIONS; PROVIDING THAT  
THE THIRD MONDAY IN JANUARY IS A LEGAL HOLIDAY  
KNOWN AS MARTIN LUTHER KING, JR. DAY, AND  
AMENDING SECTION 1-301, ARIZONA REVISED  
STATUTES.

This title is narrow and restricted in nature which requires that the body of S.B. 1008 must likewise be narrow and restricted. Taylor v. Frohmler, 52 Ariz. 211, 216, 79 P.2d 961, 964 (1938).

The scope of the title is within the discretion of the legislature; it may be broad and comprehensive, and in this case the legislation under such title may be equally broad; or, the legislature, if it so desires, may make the title narrow and restricted in its nature, and in such case the body of the act must likewise be narrow and restricted.

Id. Had the Legislature adopted a title such as "An Act relating to State Holidays" then the change relating to Columbus Day would have been valid. However, by restricting the title to the King Holiday, the Legislature narrowed the scope of the bill to that subject. Consequently, that portion of S.B. 1008 relating to Columbus Day would be, in our opinion, declared by a court to be void. Ariz. Const. art. IV, pt. 2, § 13.

The fact that the title of S.B. 1008 states that the bill relates to general provisions and amends section 1-301 does not change the result. In State v. Sutton, 115 Ariz. 417, 565 P.2d 1278 (1977) the Arizona Supreme Court considered the title of a bill which provided:

AN ACT

RELATING TO CRIMES; PRESCRIBING PENALTY FOR  
THEFT OF CREDIT CARD, AND AMENDING SECTION  
13-1073, ARIZONA REVISED STATUTES.

The bill in that case, however, also added the crime of possession of a credit card with intent to defraud. Because the title of the bill made no mention of the crime of possession, the Arizona Supreme Court held that the portion of the bill relating to the crime of possession was void. Sutton, 115 Ariz. at 419-420, 565 P.2d at 1280-1281.

Although we believe the Columbus Day portion of S.B. 1008 would be declared by a court to be void, the remainder of S.B. 1008 establishing the King Holiday remains effective. S.B. 1008 would be, in our opinion, declared by a court to be void "only as to so much thereof as shall not be embraced in the title." Ariz. Const. art. IV, pt. 2, § 13. As we stated in Ariz. Att'y Gen. Op. 188-077:

The test for severability of constitutional from unconstitutional portions of [a] statute is one of ascertaining legislative intent. E.g. State v. Watson, 120 Ariz. 441, 586 P.2d 1253 (1978). An entire statute should not be declared unconstitutional if constitutional portions can be separated. Cohen v. State, 121 Ariz. 6, 588 P.2d 299 (1978). If the remaining sections make sense in expressing the intent of the legislature, the offending portions are severable. State v. Book-Cellar Inc., 139 Ariz. 525, 679 P.2d 548 (App. 1984).

And, in Selective Life Ins. Co. v. Equitable Life Assurance Soc'y., 101 Ariz. 594, 599, 422 P.2d 710, 715 (1967), the Arizona Supreme Court stated:

[I]t is well settled in this state that where the valid parts of a statute are effective and enforceable standing alone and independent of those portions declared unconstitutional, the court will not disturb the valid law if the valid and invalid portions are not so intimately connected as to raise the presumption the legislature would not have enacted one without the other, and the invalid portion was not the inducement of the act. .

The inducement for the act was to create a Martin Luther King, Jr. Day as shown by the Governor's Proclamation amending the call for the First Special Session of the Thirty-Ninth Arizona Legislature.<sup>1/</sup> Further, looking to the language of the enactment, we see that the King Holiday

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1. The Governor, in her Proclamation, called the Legislature into special session, in part, to consider the subject of "[t]he establishment of a Martin Luther King holiday." See Ariz. Const. art. IV, pt. 2, § 3 and art. V, § 4.

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provision of S.B. 1008 is independent, distinct, complete and capable of separate enforcement. Consequently, the language of the bill relating to the King Holiday is not intimately connected with the Columbus Day portion of the bill so as to raise the presumption that the Legislature would not have enacted one without the other.

In summary, the Martin Luther King, Jr. Holiday is valid. The change of the observance of Columbus day from the second Monday to the second Sunday in October would be, in our opinion, declared by a court to be void.

Sincerely,



BOB CORBIN  
Attorney General

BC:CW:em